

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2979 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI SITHARAM ZANJE MARATHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/12/1999

ORAL JUDGEMENT

1. The petitioner came to be detained by virtue of an order passed on 12th March 1999 by Commissioner of Police, Ahmedabad city, Ahmedabad in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short]. The detaining authority in the grounds of detention took into consideration the statements of two witnesses

involving the petitioner in use of force for pursuing his bootlegging activities, resulting into disruption of public order. The authority recorded a subjective satisfaction about the correctness of the facts narrated in the statements by the witnesses and about the genuineness of the fear expressed by the witnesses qua the petitioner. After taking into consideration the possibility of resorting to other less drastic remedy, the detaining authority concluded that, in order to prevent the petitioner immediately from pursuing his illegal activities, detention under the PASA was the only remedy available that can be resorted to and the order came to be passed.

2. The petitioner has approached this Court with this petition under Article 226 of the Constitution of India challenging the order of detention on various grounds. The main ground is that the statements of anonymous witnesses were recorded on 10th and 11th March 1999, the same were verified by the detaining authority on 12th March 1999 and the order of detention came to be passed on that very day i.e. on 12th March 1999. Therefore, there was no sufficient time lag available to the detaining authority to arrive at a subjective satisfaction and the order would therefore stand vitiated.

3. Mr. Gondalia, learned advocate for Mr.Y.S.Lakhani, learned advocate for the petitioner has restricted her arguments to the above ground only. He pressed into service the decision of this Court in the case of Kalidas Chandulal Kahar v/s State of Gujarat as reported in 1993[2] GLR 1659 and submitted that the petition may be allowed.

4. Mr.H.H.Patel, learned AGP has opposed this petition. He tried to justify the passing of the order on the same day, on which the statements which are relied upon by the detaining authority, were verified, by submitting that the authority at times is required to act fact and this quickness in action may not be taken as non-application of mind.

5. In view of the rival side contentions, the factual part remains undisputed that the statements of witnesses were recorded on 10th and 11th March 1999. The same were verified on 12th March 1999 and the order of detention came to be passed on that very day i.e. on 12th March 1999. The detaining authority has based the subjective satisfaction for exercise of powers u/s 9[2] of the PASA Act and the statements of the witnesses

verified by it. It may be noted that the detaining authority must have some material to arrive at a subjective satisfaction about the genuineness of the fear expressed by the witnesses which would require a thoughtful consideration. A balance is required to be struck by the authority while exercising powers u/s 9[2] of the PASA Act between the right of the detenu of making an effective representation and the public interest and for considering either of the two, there has to be some material before the detaining authority which can be considered by the detaining authority. In the instant case, there appears nothing to indicate factors that were available and considered by the authority. No affidavit in reply is filed by the detaining authority. The Court is therefore at loss to appreciate how the detaining authority could have recorded a subjective satisfaction that the genuineness of the fear expressed by the witnesses qua the petitioner, so also the correctness of the statements qua the incidents narrated therein. That being so, the exercise of powers u/s 9[2] of the PASA Act stands vitiated and has resulted into depriving the petitioner of making an effective representation guaranteed under the Constitution of India. The order of detention therefore would stand vitiated. The ratio in the case of Kalidas C. Kahar will squarely apply to the present case.

6. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad city, Ahmedabad on 12th of March, 1999 in respect of the petitioner Govindbhai Sitharam Zanje [Marathi], is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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